IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3345 of 1998
To
FIRST APPEAL No. 3350 of 1998
With
FIRST APPEAL No. 3351 of 1998
With
FIRST APPEALS No.3353 & 3354 of 1998
With
FIRST APPEAL No. 3356 of 1998
With
FIRST APPEAL No. 1512 of 2002
To
FIRST APPEAL No. 1517 of 2002
With
FIRST APPEAL No. 1714 of 2002
With
FIRST APPEAL No. 683 of 2003
With
FIRST APPEAL No. 1724 of 2002
To
FIRST APPEAL No. 1726 of 2002
With
FIRST APPEAL No. 241 of 2003
To
FIRST APPEAL No. 243 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SPECIAL LAND ACQUISITION OFFICER - Appellant(s)
Versus
STATE OF GUJARAT & 1 - Defendant(s)

==========

Appearance :
MR AJAY R MEHTA and MR RR MARSHALL for Appellant(s) : 1,
MS HANSA PUNANI, AGP for Respondent (s) : 1,
MR AJ PATEL and MR MD VAKIL for Respondents,

==========

CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 27/12/2006

CAV JUDGMENT

In this different groups of appeals, the appellant i.e. Oil & Natural Gas Company [ONGC] has challenged respective decisions of the Ld. Assistant Judge, Mehsana, enhancing the compensation already fixed by the Collector for temporary occupation of the agricultural lands [hereinafter referred to as the 'land'] belonging to the respondents under section 35 of the Land Acquisition Act, 1894 [hereinafter referred to as 'the Act']. At the outset, it may be stated that in the memorandum of appeal, the grounds which have been urged are purely based on the facts of the case alone and no averment has been made in respect of the scope of reference under section 35 (3) of the Act. But the advocates appearing for the ONGC have now addressed me on the question whether the Court was justified in enhancing the compensation and if yes, to what extent. They have also made it very clear that they do not challenge the quantum of compensation decided by the Court, but their challenge is very

limited. Their submission is that the Court has no power to award compensation beyond the maximum period of three years from the date of occupation when the reference is made under section 35(3) of the Act. According to them, in the instant cases the Court has traveled beyond the scope of the reference and has made the enhancement applicable to the entire period of occupation of the land. Since the point of law canvassed in all these appeals is common, they are heard together and now they are being disposed of by this common judgment.

2. Facts can be stated as under :

2.1. The land was required for drilling oil wells by ONGC. Hence, the Project Manager, ONGC, Mehsana Project, submitted a proposal for temporary occupation of the land. Since it appeared to the appropriate Government that land was needed for public purpose, the said proposal was accepted by it and in pursuance thereof, it exercised powers under section 35 (1) of the Act and directed the Collector to procure the occupation of the land. After complying with the necessary formalities, the Collector procured the occupation of the land by private negotiations. The Collector thereafter fixed the compensation. Since the respondents were totally dissatisfied with the rate of compensation fixed by the Collector, they raised dispute. The Collector referred the difference as to the sufficiency of compensation to the Court for its decision. The claim was based on the averments that the land was fertile land; there was facility of irrigation and the appellants obtained various crops in three seasons. It was

also averred that these villages had various facilities such as electricity, water. School, hospital, etc. On these averments, it was pleaded that the compensation at the rate fixed by the Collector was hopelessly inadequate and the respondents deserved to have it at the claimed rate.

2.2. The aforesaid case of the respondents was resisted by the appellants by filing written statement and they denied the averments of the respondents. According to them, the rate of compensation determined by the Collector was just, fair and adequate and there was no need to enhance it. Parties led oral as well as documentary evidence to substantiate their respective averments.

2.3. On the basis of the material produced before it, the Reference Court arrived at a conclusion that the respondents proved that compensation fixed and paid to them was inadequate. The Court also held that the respondents were entitled to receive additional compensation. Accordingly, the Court awarded compensation. The appellants have, therefore, approached this Court by filing the present appeals.

3. I have heard Mr. Ajay Mehta and Mr. RR Marshall, learned advocates appearing for the appellants, Ms. Hansa Punani, Ld. AGP for respondent no. 1 - State and Mr. AJ Patel and Mr. MD Vakil, learned advocate for respective respondents.

3.1. Mr. Ajay Mehta and Mr. RR Marshall, learned advocates for the ONGC/appellants have submitted that beyond the period of three years, the Collector has no jurisdiction to deal with the land under section 35. According to them, at no point of time the farmers have made any effort to recover the possession of the land in question. It is submitted that instead of cultivating the land, the farmers found it more profitable to give it on rent to ONGC and earn more money and that too without putting any labour of cultivation. They have placed reliance on the judgment of Ld. Single Judge of this court rendered in the case of ONGC v. Pandya Prahladbhai Manilal & ors., in First Appeal Nos. 1048 of 2006 and allied matters and in particular, page 8 and onwards. According to them, the learned Single Judge had directly considered and dealt with provisions of sections 35 and 36 of the Act. They have submitted that the Reference Court has no plenary jurisdiction. According to them, section 63 of the Civil Procedure Code will apply to present proceedings. To support their submissions on the points, they have relied upon decisions of Apex Court reported in Delhi Cloth & General Mills v. Its Workmen reported in AIR 1967 S.C. 469 para 9.

3.2. Ms. Punani, Ld. AGP appearing for the State has supported the submissions of ONGC/appellants.

3.3. Mr. AJ Patel has made submissions on behalf of the contesting respondents/original applicants, which have been adopted by Mr. Vakil. Submission of Mr. Patel is that the agreement for occupation of the land was only for three years. Even then, till this date the possession is not returned to the appellants. He has also submitted that the claimants are poor farmers. They have been deprived of the land right from the day of taking possession till this date. However, they are not getting the return by way of compensation equivalent to the annual income that they could have earned had they been in possession of the land. The occupation of the land by appellants is unauthorized and illegal. He has further submitted that there may be some increase in rent by the ONGC, but that is merely an eye wash as compared to the loss suffered by the claimants. According to him, the rent paid by the ONGC was lesser than the prevailing market rent and therefore the Court is required to determine compensation at the rate of market rent. According to him, under section 35(3) of the Act, the Reference Court has power to resolve the dispute with regard to the rate of compensation and award just compensation even for the period beyond three years if the possession is continued. He has made submission on the scope of reference and has submitted that even when the occupation is beyond three years, the reference can lie. He has placed extensive reliance on the decision rendered by the Division Bench of this Court dated 6th November, 2001 rendered in the case of General Manager v. Special Land Acquisition Officer in First Appeal No.3658 of 2001 and its allied matter. He has submitted

that in the case before the Division Bench the occupation of the land was beyond the period of three years. Inspite of that, the Court entertained the appeal and determined the just compensation. According to Mr. Patel, ONGC is a mighty corporation (now company) and it should not exploit poor farmers but it should pay them just compensation and revise it regularly since the Apex Court in several cases has pointed out that 10% rise should be taken as average per year. He has submitted that section 35 deals with compensation for temporary occupation. It is for the loss suffered by the person on account of temporary occupation of his land. For determining the loss and the rate of compensation, yearly income has to be seen. He has submitted that State should not take shelter under technicalities. They have, therefore, submitted that the compensation awarded by the Reference Court after considering all these aspects is just, reasonable and proper and hence does not require interference.

4. Before I deal with the submissions, provisions with respect to temporary occupation are required to be looked into.

4.1. Part-VI of the Act deals with temporary occupation of the land, which contains sections 35, 36 and 37. The legislative history of these provisions can be traced back to the year 1861. This can be found from the report of the Select Committee dated 23rd March, 1898. The Select Committee in para. 10 of the report observed as under :-

"Part VI of the Act deals with occupation of land by the Government for temporary purposes as opposed to permanent acquisition by the Government under the preceding part of the Act which under the land 'vested absolutely in the Government free from all other estates, rights, titles and interest'. In the year 1861 it was found necessary to amend the Act (IV of 1857) on two points, Act II of 1861 provided for the case of an acquisition of land needed for the construction of any road, canal or railway, and authority was given form the temporary occupation of adjacent lands not more than 100 yards, and in certain cases not more than two miles from the 'centre line' of the same, for the purpose of taking earth or other materials for making or repairing the same, or for depositing earth, etc, thereon, or for erecting temporary buildings or workshops or for the construction of temporary roads or railway. The full value of all 'clay, stone, gravel, sand and other materials taken therefrom 'was to be given as agreed upon, or, in the event of any dispute, by an award, as in the case of a permanent acquisition".

They further said : "Part VI of the revised Bill, as of the present Act (X of 1870), concerning the temporary occupation of land permits a reference to the civil court as to the sufficiency of the Collector's compensation. The Government of Bombay and the North Western Provinces have asked that the reference may include a question as to the apportionment of the compensation. We have adopted this suggestion." In this background the legislature has framed provisions regarding temporary occupation.

Sections 35, 36 and 37 read as under :-

"35. Temporary occupation of waste or arable land, procedure when

difference as to compensation exists.- (1) Subject to the provisions of Part VII of this Act, whenever it appears to the appropriate Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a company, the appropriate Government may direct the Collector to procure the occupation and use of the same for such terms as it shall think fit, not exceeding three years from commencement of such occupation.

(2) The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof, for such term as aforesaid, and for the materials (if any) to be taken therefrom, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payments, as shall be agreed upon in writing between him and such persons respectively.

(3) In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Court."

[vide Gujarat Act 20 of 1965 'waste' or 'arable' words have been deleted]

"36. Power to enter and take possession, and compensation on restoration.- (1) On payment of such compensation, or on executing such agreement, or on making a reference under section 35, the Collector may enter upon and take possession of the land and use or permit the use thereof in accordance with the terms of the said notice.

(2) On the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein;

Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the appropriate Government shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a Company."

"37. Difference as to condition of land.- In case the Collector and persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the Collector shall refer such difference to the decision of the Court."

4.2. Thus, it can be seen that Chapter-VI simply deals with temporary occupation of land. It contains only three sections, namely sections 35, 36 and 37, which are inter linked. Apart from these provisions, which are subject to chapter VII which deals with acquisition in case of companies, there are no other provisions which deal with temporary occupation of the land. This chapter is a slight deviation from the other provisions. The provisions previous to Chapter VI deal with acquisition of land on permanent basis. As opposed to that, this is merely temporary occupation for some particular public purpose for limited period.

4.3. Under sub-section (1) of section 35 the appropriate Government has to be satisfied about the need of temporary occupation or use of any land for public purpose. If it is for the company, the Government has to make inquiry as prescribed in Sec. 40 (Chapter VII) of the Act r/w. Rule 4 of Land Acquisition (Companies) Rules, 1963 prior to arriving at the satisfaction. Upon arriving at such satisfaction, the Government can grant consent and direct the Collector to procure the occupation and use of the same for such period as it shall think fit, but not beyond the period of three years. Sub-section (2) of section 35 provides for giving written notice to the person interested in the land and for determining the compensation and executing written agreement. Sub-section (3) of section 35 provides that in case there is difference with regard to sufficiency of compensation or apportionment thereof between the Collector and the person interested, the Collector shall refer such difference to the decision of the Court. Sub-section (1) of section 36 empowers the Collector to enter upon and take possession of the land upon happening of any of the three eventualities mentioned therein, namely, payment of compensation, or executing the agreement or making reference under section 35. Sub-section (2) of Section 36 enjoins upon the Collector that on expiry of the term, he shall make or tender to the persons interested, compensation for the damage, if any, done to the land and not provided for by the agreement and shall restore land to the persons interested therein. Thus, the duty is cast upon the Collector to ascertain the damage to the land in question and, if there is any, to pay

compensation for it, and to restore the possession to the original owner. Proviso to sub-section (2) of section 36 deals with the permanent acquisition in certain circumstances such as when the land has become permanently unfit for its former use and the persons interested so require. Section 37 only envisages that if there is any difference between the Collector and person interested i.e., owner with regard to the condition of the land, he shall refer the matter to the Court.

5. Keeping in view the provisions of Sections 35 and 36 of the Act and the submissions made by the Ld. Advocate for the rival parties the questions that may arise for my consideration can be spelt out as under:

1. Whether the Collector has power to refer the difference as to the sufficiency of compensation for the period subsequent to expiration of the term agreed upon by the parties or the maximum period of 3 years ?

2. When such reference is made whether decision of the court on such reference can be legal and in accordance with provisions of this Chapter?

3. Even if the reference u/S. 35 is made by the collector within the stipulated period or within 3 years can the decision of the court cover the period subsequent to expiration of maximum 3 years ?

5.1. As can be seen from foregoing discussion, the procedure for

temporary occupation of land, is substantially contained in Sections 35 and 36 of the Act. The said procedure of-course is subject to Chapter VII which deals with acquisition of land for companies. The occupation of land can be for such term as the appropriate Government may think fit, but such term cannot exceed three years from the commencement of such occupation. In such case, though the possession is taken under the provisions of section 36 (1) of the Act, the ownership of the land remains with the person interested in it. This is exactly Contrary to the case of permanent acquisition wherein the possession is taken under section 16 of the Act and thereby the ownership of the land is divested with its title and the title to the land vests in the Government absolutely free from all encumbrances. Section 35 (1) provides for retention of the land by the Government or the company for maximum period of three years and there is no provision in the Act whereby extension of that period can be granted or deemed to be granted automatically. But there is also no specific bar to procure land for further temporary occupation by exercising power under section 35 (1) from time to time so long as the public purpose subsists. But in absence of the same, the occupant is not authorized to retain the land beyond 3 years. Of course the parties can arrive at consensus and the owner can permit the occupier to continue with the possession. But in absence of compliance of requisite procedure, it will not be governed by the provisions of the Act though the possession can not be termed as unauthorized one. In that case it will be governed by the provisions under common law.

5.2. The compensation and the manner in which it is to be received have to be determined by agreement in writing between the Collector and the person interested in the land. If there is any difference between the two, the said difference is required to be referred to the Court by the Collector as per provisions of section 35 (3) of the Act, which has to be in relation to the sufficiency of the compensation. The difference is when the collector determines the compensation at figure A and in the opinion of the person interested in the land, the compensation has to be at figure B, then it is this difference between the two figures which has to be referred to the Court to inquire whether compensation offered by the Collector is sufficient. Thus, sub-section (3) of section 35 only confers the power of making reference on the question of sufficiency of the compensation or apportionment thereof and not beyond that. If conjoint reading of sub-sections (2) and (3) of section 35 and sub-section (1) of section 36 is made, it shows that the Collector may enter upon and take possession of the land on payment of the compensation or on executing such agreement or on making a reference under section 35(3) of the Act. The period of three years or the stipulated term under the agreement will commence only from the date of occupation of the land. Sub-section (2) of section 36 prescribes what Collector has to do on the expiration of the term. He has to tender to the person interested compensation, if there is any damage done to the land and it is not covered under the agreement and also to restore the land

to the persons interested therein. Therefore, it is incumbent upon the Collector to return the possession to the persons interested in the land on expiration of period of three years. The provisions of Section 35 and 36(1) of the Act are made applicable only upto expiration of term or three years from occupation whichever is earlier. Whereas Section 36(2) and 37 become effective immediately upon expiration of stipulated period only for the limited purpose already stated above. In the circumstances, it is clear that when term of occupation gets over, the provisions of Section 35 and 36(1) of the Act cease to apply. The retention of possession either by consent or unauthorized ceases to be governed by the Act. The only exception is section 37, which provides that at the expiration of the term, if there is any difference about the condition of land or there is any other matter connected with the agreement, the Collector can refer such difference to the decision of the Court. But that would be only when the possession is restored at the expiration of three years and dispute arises in case of condition of land and not otherwise.

5.3. The reference under section 35(3) is different than reference under section 18 of the Act. Under section 35(3), it is the Collector who is bound to make the reference on his own motion when the persons interested in the land differs as to sufficiency of compensation. So is the case for reference under section 37. Whereas under section 18 of the Act, person interested and who has not accepted the award made by the Land Acquisition Officer, has to

make written application to the Collector to require him to refer the matter for the determination of the Court. It has also to be kept in view that so far section 35(3) is concerned, the Collector gets power to refer the matter only for limited purpose i.e for deciding the sufficiency of the compensation or apportionment and not beyond that. Further as already stated above, provisions of Sections 35 and 36(1) of the Act apply for maximum period of 3 years. Therefore, it is very natural that the Collector is empowered to make reference for the dispute which may arise within period of three years. Any dispute or difference raised after expiration of the said period, the matter cannot be referred to the Court for its decision on the sufficiency of the compensation. Therefore, it is obvious that the Collector gets power to refer the dispute as to sufficiency of compensation which may arise within the agreed term or maximum period of three years. Any dispute which crosses this time limit cannot be the subject matter of the decision of the Court. In other words, the Collector's reference has to confine itself to the controversy arising within the prescribed period under section 35 (1) of the Act. The matter of compensation is contained in Section 35 of the Act. In such reference, therefore, the court is required to give its decision in relation to difference as to the sufficiency of compensation only for maximum period of 3 years and not beyond that even when the reference is made within stipulated period. Any decision on the reference beyond period of three years cannot be termed as legal and in accordance with the provision of the Act and hence it is without jurisdiction. Of course the parties may take this decision in

consideration to determine rent for the period beyond three years, but obviously under the Act it has no application nor it binds parties for the period subsequent to expiration of maximum three years.

7. To sum up the discussion, which can be done while answering the questions stated in paragraph 5 of the judgment, as under:

7.1. Considering the provisions of Sections 35 and 36(1) of the Act, the Collector is required to exercise power within three years, he cannot refer the difference as to the sufficiency of the compensation for the period subsequent to expiration of the term agreed upon by the parties or the maximum period of three years. Even if such reference is made, then also the Court in its decision cannot give any decision in such reference. When any such decision is given, it cannot be said to be legal and in accordance with the provisions of Chapter VI. Similar is even when the Reference is made within stipulated period but the decision is rendered after expiry of 3 years. The decision has to be limited to three years and it cannot travel beyond it. In the cases before me, both these situations have appeared i.e., in some cases though reference has been made before expiry of 3 years, decision has been given much after the expiry of 3 years and in some cases the reference itself is made after 3 years and in both these types of references the Court has given decision covering the entire period of occupation. It is not permissible.

8. This brings me to the last lap of the judgment, where I propose to refer to the decisions cited at the bar.

8.1. Mr. Ajay Mehta has placed reliance upon decision of the Apex Court on the scope of reference as well as this Court in support of his first part of arguments.

8.2. First he has cited the decision of this Court rendered in the case of ONGC v. Pandya Prahladbhai Manilal & Ors.(supra). The learned Single Judge had occasioned to consider the scope of Sections 35 and 36 of the Act. He has drawn my attention to the following observations made by the learned Judge in the Judgment :-

> "It is, therefore, not open to the Collector to make a Reference for determining the compensation, either in a gross sum of money, or by monthly or other periodical payments for the subsequent period after expiration of the temporary acquisition period by resorting to Sec. 35 (3) of the Act. If the acquiring body has entered into any written or oral agreement with the landowners, the acquiring body may retain the lands in pursuance of such oral or written agreement, if any, and such retention will be governed by the oral or written agreement, but certainly the provisions of section 35 of the Act would have no application after the aforesaid temporary acquisition period is over. Whatever amount

> is fixed between the parties will be governed by the new contract, if any, between the landowners and the acquiring body. Such retention of possession or fixation of amount of rent will be governed under ordinary law, and not under the Act. If the acquiring body has retained the possession by separate agreement between the acquiring body and the landowners, the same would be subject to an agreement between the parties, but in such an eventuality, if there is any dispute between the acquiring body and landowners, the Collector cannot make a reference for such period as if it is a reference under section 35 (3) of the Act. In other words, the Collector has no power to make a reference for fixing the amount of rent or compensation for a period exceeding three years from the commencement of such occupation. In a Reference under section 35(3) of the Act, the Court can only determine compensation/amount in connection with the period of three years from the date of taking possession. Considering the aforesaid provisions, it is clear that interested persons can ask for reference to the Court under section 35(3) of the Act if such persons are not satisfied by the sufficiency of the compensation or apportionment fixed by the Collector at the time of taking possession for occupation of the land for a temporary period of three years."

I am in total agreement with the learned Single Judge as I have also formed an opinion that temporary occupation can only be for maximum period of three years and under Section 35 (3) of the Act the difference as to sufficiency of compensation beyond the period beyond three years cannot be referred to the Court for its decision.

8.3. Mr. Mehta has submitted that the Court cannot enlarge the scope of Reference and travel beyond the issue required to be determined in the Reference. In support of the said submission, he has placed reliance on the decision of the Apex Court rendered in the case of **The Delhi Cloth and General Mills Co. Ltd., v. The Workmen & Ors., reported in AIR 1967 SC pg. 469**. In paragraph 9 of the said judgment, it has been observed by the Apex Court as under:-

> "From the above, it therefore, appears that while it is open to the appropriate Government to refer the dispute or any matter appearing to be connected therewith for adjudication, the Tribunal must confine its adjudication to the points of dispute referred and matters incidental thereto. In other words, the Tribunal is not free to enlarge the scope of the dispute referred to it but must confine its attention to the points specifically mentioned and anything which is incidental thereto."

8.4. This principle can safely be applied to the scope of Reference under Section 35 (3) of the Act. Under the scope of Section 35 (3) of the Act, the Court is required to give decision on difference as of sufficient of compensation only for a period of three years from the date of occupation of the land. Any decision covering subsequent period would be beyond the scope of reference and the Court is not permitted to cover such period.

9. Mr. Patel has placed extensive reliance on the judgment delivered by the Division Bench in the case of General Manager v. Special Land Acquisition Officer, (supra). On the basis of this decision, Mr. Patel has contended that the Court has to consider the plight of the farmers since ONGC had retained the possession beyond the period of three years. He has drawn my attention to the remarks made by the Division Bench to the effect that when the lands of agriculturist are taken for exploration, of course, for natural minerals, or for natural products, it does not mean that the agriculturist are to be exploited. They are required to be paid adequate compensation keeping in mind the principle laid down in the Act. According to him in the present case, the ONGC has simply exploited the farmers by depriving them of their valuable lands and not paid adequate compensation and hence the Reference Court has rightly awarded compensation which does not require interference. As stated above, the appellants have not addressed the Court on this aspect; whereas Mr. Patel has cited this decision in support of his submission that the ONGC is supposed to pay adequate compensation which is granted by the Reference Court. It is to be noted here that so far as the question with regard to scope of Sections 35 and 36 is concerned, which is the main submission in instant cases, it was never the issue before the Division Bench and it has not considered the matter in that focus.

10. The learned advocate for the respondents have also submitted that

no pleading or arguments were made with regard to scope of Section 35 of the Act by the appellants before the Reference Court as well as in appeal memo and hence they cannot be allowed to raise it before this Court for the first time. This submission of the respondents cannot be accepted. It is well known proposition of law that the law point can be raised at any stage of the proceedings. This is neat point of law and even if the same is not raised before the Reference Court the appellants are well within their bounds to raise such issue and can be decided by this Court.

The result is that these appeals are allowed with no order as to costs.

[Akshay H. Mehta, J.]

* Pansala.